

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

9 RONALD THAXTON,)
10 Plaintiff,) No. CV-06-3052-MWL
11 v.) ORDER GRANTING JOINT
12 LINDA S. McMAHON,¹) MOTION FOR REMAND
13 Commissioner of Social)
14 Security,)
Defendant.)

The parties have filed a stipulation for remand of the above captioned case to the Commissioner for administrative proceedings; specifically, to have the Appeals Council remand the case to an administrative law judge for a de novo hearing. (Ct. Rec. 28). The parties have consented to proceed before a magistrate judge. (Ct. Rec. 7).

The stipulation indicates that, according to a memorandum received January 21, 2007, from the Chief of the Court Case Preparation and Review Branch of the Office of Disability

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¹As of January 20, 2007, Linda S. McMahon succeeded Defendant Commissioner Jo Anne B. Barnhart as Acting Commissioner of Social Security. Pursuant to Fed. R. Civ. P. 25(d)(1), Commissioner Linda S. McMahon should be substituted as Defendant, and this lawsuit proceeds without further action by the parties. 42 U.S.C. § 405(g).

1 Adjudication and Review in Falls Church, Virginia, the second tape
2 of the administrative hearing held on July 28, 2005, could not be
3 located. (Ct. Rec. 28).

4 The stipulation provides that the Joint Conference Committee
5 of Congress, in reporting upon the Social Security Disability
6 Amendments of 1980 (to the Social Security Act) stated that in
7 some cases procedural difficulties, such as an inaudible hearing
8 tape or a lost file, necessitate a request for remand by the
9 Commissioner. (Ct. Rec. 28). The intent of the Committee was
10 that such procedural defects be considered "good cause" for
11 remand. The Committee states:

12 Such a situation is an example of what could be considered
13 "good cause" for remand. Where, for example, the tape
14 recording of the claimant's oral hearing is lost or
15 inaudible, or cannot otherwise be transcribed, or where the
claimant's files cannot be located or are incomplete, good
cause would exist to remand the claim to the Commissioner for
appropriate action to produce a record. . . .

16 H.R. Rep. No. 96-944, 96th Cong., 2d Sess. 59 (1980).

17 The parties indicate that the inability to locate the second
18 tape of the administrative hearing held on July 28, 2005,
19 constitutes a procedural difficulty that establishes good cause
20 for remand and necessitates this stipulation for remand. (Ct.
21 Rec. 28).

22 The Court finds good cause has been established and **HEREBY**
23 **ORDERS** as follows:

24 1. The parties Joint Motion to Remand (Ct. Rec. 28) is
25 **GRANTED**.

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1 2. The above-captioned case shall be remanded for a de novo
2 hearing pursuant to sentence four of 42 U.S.C. §405(g).

3 3. The District Court Executive is directed to enter this
4 Order, forward copies to counsel, and administratively **close** this
5 file without prejudice.

6 DATED this 6th day of February, 2007.

S/ Michael W. Leavitt
MICHAEL W. LEAVITT
UNITED STATES MAGISTRATE JUDGE